

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 258 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PINAKIN M PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SR BRAHMBHATT for Petitioners
MS PS PARMAR for Respondent No. 1 & 2
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/06/97

ORAL JUDGMENT

#. Heard learned counsel for the parties and perused the Special Civil Application.

#. The petitioners, Leprosy Supervisors in the Health and Family Welfare Department of the Government of Gujarat, filed this Special Civil Application before this

Court and prayer has been made for quashing and setting aside the Circular of the Director, annexure 'I' and the Government Memorandum, annexure 'J'. Further prayers has been made for direction to the respondents to prepare seniority list of the petitioners and Sanitary Inspectors cadre and Trachoma Supervisors cadre personnel as per the contentions contained in the Special Civil Application and in accordance with law. Further prayer has been made for direction to the respondents to operate the seniority of the petitioners as per the seniority list issued vide the Director's letter dated 9th August 1978. The petitioners have further prayed for direction to the respondents to cancel the provisional list dated 29th August 1979 issued pursuant to the Circular of the Director at annexure 'I' and to prepare final seniority list as per the contentions contained in the Special Civil Application and/or to restore the seniority list at annexure 'HH' and to regulate all promotions with retrospective effect on that basis and to pay difference in salary and all other consequential benefits on that basis.

#. All the petitioners joined the services in different categories of posts on different dates in the Public Health Department. Some of the petitioners were directly recruited as Leprosy Assistants. Certain other petitioners who were formerly working as Vaccinators or B.C. Technicians in service of the State of Gujarat were promoted to the post of Leprosy Assistants. The petitioners were further promoted to the post of non medical Assistants. Next promotion has been given to the petitioners to the post of Leprosy Supervisors. All these details have been given by the petitioners in Annexure 'A' enclosed to the Special Civil Application.

#. In the year 1964-65, the Department gave options to certain persons working as Sanitary Inspectors for absorption in the posts of Leprosy Assistants and asked them to express their willingness. It is also not in dispute that the Government discontinued National Trachoma Control Programme and V.D. Control Programme with effect from 30th September 1974 and discontinued the posts under the abovesaid programmes in a phased manner. As a result of discontinuation of the said programmes, few Trachoma Supervisors came to be transferred as Sanitary Inspectors or Vaccinator Supervisors or Malaria Inspectors, while others came to be transferred as Leprosy Assistants at their requests. It is also not in dispute that the post which these persons were holding in the aforesaid programmes were abolished.

#. The contention of the petitioners' counsel is that all these persons have been transferred to the post of Leprosy Assistants or other posts as aforesaid on their own request, but I do not find any such thing in the order dated 27th September 1974. The order dated 27th September 1974 of the Department has been filed by petitioners as annexure 'B' at page 21 of Special Civil Application and that order reads as under:

Vide Govt. Memorandum dated 21.9.74 quoted above Govt. has discontinued the N.T.C. prog. and V.D. Control Programme w.e.f. 30.9.1974 A.N. It has been decided to discontinue the posts under T.C. Programme in the phased manner. Accordingly following orders of transfer for 29 Trachoma Supervisors are hereby issued. Telegraphic intimation have already been given to the concerned officers to relieve the incumbents on 30.9.1974 A.N. The posts of Trachoma Supervisors ((health Education Assistants) vacated by these incumbents stand discontinued w.e.f. 30.9.74 A.N.)

1. Shri V.P. Zalawadia, Trachoma Supervisor, Moti Mardad, Dist. Rajkot, is transferred as Sanitary Inspector, Jam Vanthali, R.H. T.C. Aliabada Dist. Jamnagar vice Shri C.M. Trivedi, retired.
2. Shri J.N. Parmar, T.S. Kotda-Sangami Dist. Rajkot, is transferred as Vaccination Supervisor (NSEP) Aliabad, under R.H.T. Aliabada vice Shri B.P. Patel.
3. Shri D.D. Joshi, T.S. Kuvadava, Dist. Rajkot, is transferred as V/n Supervisor, Gondal Dist. Rajkot in the newly sanctioned post created vide G.R.P. & H.D. No. EDA-1975-3769-K dated 17.5.74.
4. Shri R.M. Upadhyay, T.S. Dhari Dist. Amreli is transferred as V/n. Supervisors Bhavnagar in the newly sanctioned post created vide G.R.P. & H.D. No. EDA-1070-3769-K dt. 17.5.74.
5. Shri J.J. Udesingh, T.D. Damnagar Dist. Amreli is transferred as V/n Supervisor (NSEP) Bhavnagar vice Shri H.S. Patel transferred.
6. Shri M.N. Purohit, T.S. Nageshri Dist. Amreli is transferred as Mal. Inspector Khamba under NMEP Unit Amreli vice Shri V.P. Joshi promoted and transferred.
7. Shri P.D. Tripathi, T.S. Dabhoda Dist.

Gandhinagar, Bavla is transferred as S.I. Under R.H.T.C. Padra Dist. Baroda vice Shri G.M. Shah promoted and transferred.

8. Shri R.N. Vaiday T.S. Dholka under RHTC Bavla is transferred as Malaria Insp. under MMEP Unit Godhra, Dist.Panchmahal.

8. Shri R.N. Vaidhya T.S. Dholka under RHTC Bavla is transferred as Malaria Insp. K.wanj under NMEP unit Dist.Kaira vice Shri B.R. Joshi Promoted and transferred.

9. Shri J.T. Dave T.S. Adalaj Dist. Gandhinagar is transferred as Malaria Insp. under NMEP unit Godhra Dist. Panchmahal vice Shri B.D. Dawana promoted and transferred. it Dist. Kaira vice Shri B.R. Joshi Promoted and transferred.

10. Shri P.R. Bhatt T.S. Bavla under RHTC Bavla dist. Ahmedabad is transferred and posted as MTBW Navsari in DTC Navsari vice Shri N.F. Vyas, transferred.

11. Shri S.S. Valant T.S. under Dist. Kaira is transferred as Leprosy Asstt. Kora, Dist. Bharuch under MOLCU Navsari vice Shri N.D. Patel promoted and transferred.

12. Shri H.M. Saddiqu T.S. Bhamt Dist. Kutch is transferred as Malaria Inspector under NMEP unit Bhuj Dist Kutch vice Shri P.M. Thakkar promoted and transferred.

13. Shri J.T. Patel T.S. Daol Dist Kaira, is transferred as Leprosy Asstt. Bulsar city under LCU Bulsar in a vacant post.

14. Shri P.M. Patel T.S. Kathana Dist. Kaira, transferred as Lep. Asstt. Bulsar West under LCU Bulsar in the vacant post.

15. Shri A.G. Thakor Lep. Asstt. Kodinar Dist. Bulsar is transferred in the same capacity in this Directorate vice Shri M.B. Patel L.A. promoted.

16. Shri R.M. Patel T.S. Limbashi Dist Kaira is transferred as Leprosy Asstt Rohina Dist. Bulsar vice Shri A.G. Thakor transferred.

17. Shri S.C. Satija Vaccination Sup. (NESP) Porbandar

Bhuj is transferred as V/n.Sup. Patan Dist.Mehsana vice Shri G.K.Bhatt, promoted and transferred.

18. Shri D.N.Trivedi T.S.Mahudha Dist Kaira, is transferred as Lep.Asstt. against the post of Lep.Supervisor Mandvi, Surat Dist.
19. Shri B.I.Patel T.S.Alindra Dist.Kaira is transferrred as Lep.Asstt. against the post of Lep.Sup.Jambusar Dist. Bharuch.
20. Shri A.J.Patel T.S.Jothana Dist.Mehsana is transferred as Lep.Asstt. Sakar Patel Dist.Dangs.
21. Shri A.A.Saiyed T.S. Shankeshvar Dist.Mehsana is transferred as Asstt.Lepsory Asstt. Mahuva Dist.Surat.
22. Shri M.K.Patel T.S.Jagudan Dist Mehsana is transferred as LepAsstt. Olpad Dist.Surat.
23. Shri S.N.Valand T.S.Kharod Dist Mehsana is transferred as Lep.Asstt.Mandvi Dist Surat.
24. Shri L.J.Chaudhary T.S.Gotwa Dist.Mehsana is transferred as Lep.Asstt.against the post of Lep.Sup. Ankleshwar Dist.Bharuch.
25. Shri T.L.Desai T.S.Sundhia Dist.Mehsana is transferred as Lep.Asstt. Sankheda Dist.Baroda.
26. Shri J.M. Makwana T.S.Satlasana Dist.Mehsana is transferred as Lep.Asstt. against the post of Lep.Sup. Baroda.
27. Shri M.I.Patel T.S.Hajiput Dist.Mehsana is transferred as Lep.Asstt.against the post of Lep.Sup.Dhanpur Dist.Bulsar.
28. Shri R.D.Thakkar T.S.Nadipur, Dist.Mehsana is transferred as Lep.Asst. against the post of Lep.Sup. Dhanpur Dist.Bulsar.
29. Shri K.M.Patel T.S. Charanda Dist.Mehsana is transferred as Lep. Asstt. Pindvel Dist. Bulsar.
30. Shri L.G.Rajpur T.S.Sariyad Dist.Mehsana is transferred as Asstt. Ranavali Mills Dist.Bulsar.

The incumbents at Sr.No.18, 21, 11, and 23 will be on the deputation to the Dist.Panchayat Surat until further orders.

The incumbents at Sr.No.19 & 24 will be on deputation to the Dist. Panchayat Broach until further orders.

The incumbents at Sr.No.20 will be on deputation to the Dist.Panchayat Baroda until further orders.

The incumbents at Sr.No.27, 28, 29 and 30 will be on deputation to the Dist.Panchayat Bulsar until further orders.

As the above transfer involve change in this H.Qs.They will be entitled to joining time and T.A. as per B.C.S. Rules.

sd/-

For Director of Health
Service
(Health Section).

Under the said order, the persons who were working in the scheme were posted on transfer to different posts in the Department and some of them have been sent on deputation to District Panchayats till further orders. It appears that lateron, option has been asked from those persons regarding their continuation in the Panchayat services or the Government services. It also appears that number of persons aforestated who were on deputation to various Panchayats opted for the State services and as such, under the order annexure 'C', dated 5th August 1976, they have been withdrawn from the District Panchayats. The order annexure 'C' states that the Sanitary Inspectors working in the pay scale of 330-560 are promoted purely on temporary basis as non medical Assistants in the pay scale of 350-600 and subject to the condition that the promotee will have to give an undertaking in writing in prescribed form enclosed thereto that once he has accepted the post of non medical Assistant, he will have no claim to his original cadre of Sanitary Inspector. The names of the incumbents, place of posting, to whom they have to report for duty etc. has been shown in the accompanied statement to the said order. Copies of this order have been sent to various District Development Officers with the request that the Leprosy Assistants as shown in the order and are on deputation to various District Panchayats, opted for State services, are withdrawn from the respective Panchayats and posted and promoted as shown against their names on State level

post. A request has further been made to relieve them immediately. So, those persons from the scheme which was discontinued have been given promotion under the order dated 5th August 1976. So far as Sanitary Inspectors are concerned, they were taken up in the Department after 1964-65 and the petitioners have not produced any document on record to show that they were taken subject to the condition of giving up of their seniority. The Government Resolution on which reliance has been placed may not be strictly applied to the present case as it is not the matter of two different Departments, but it is the matter of one and the same Department, though these persons were transferred from one post to another post. However, as stated earlier, the petitioners have failed to produce any documentary evidence on the record that the Sanitary Inspectors who have been transferred to Leprosy Section for absorption on the post of Leprosy Assistant have been put to condition that they have to forego their previous service for seniority. So far as other class of persons is concerned, it is clear case of absorption of these persons in the same Department on the post of Leprosy Assistant etc. and as such, it is done in the public interest. It cannot be said to be a case of transfer on their own request. However, when the scheme has been discontinued in which these persons were working, they were required to be absorbed elsewhere in the Department where posts are available, on the equivalent post and in such case of absorption, certainly they will not be put to a condition of foregoing their past services. It is true that earlier, the seniority list has been prepared on the basis of taking dates of these persons for continuous services on which they joined in Leprosy section of the Department, but it was apparently a mistake and the same has rightly been corrected by the Director under its impugned order and which has also been approved by the Government. I do not find any illegality whatsoever or any unconstitutionality in both the orders of the Director and the Government where seniority to this category of persons was given from the date of their initial appointment in the Department. Apart from this, all the petitioners, and these Sanitary Inspectors and the persons of the aforesaid scheme have been promoted to the next higher post. This is apparent from the writing given to the petitioners' counsel dated 8th April 1977. However, their grievance is that in the cadre of Leprosy Supervisor these persons have been given the same seniority which were were having in the earlier cadre. Nothing wrong has been committed in giving to these persons, the seniority which they were having in the lower cadre. The Circular dated 25.1.79, annexure 'I' of

the Director of Health Service, Government of Gujarat, giving them seniority in the lower cadre from the date of entry in the service of the Department, as held above, is not illegal and as such, this grievance made by this application also does not survive. Not only this, the petitioners have also not given out any detail as to whether still any grievance survives. Whatever is written by the counsel for the petitioners appears to be his own and none of the petitioners have filed any Affidavit.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

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